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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 MICHAEL FOLEY,

11 Plaintiff(s),

12 v.

13 JUAN CARLOS VALDES, et al.,

14 Defendant(s).
15

Case No.: 2:17-cv-02783-GMN-NJK

ORDER

(Docket No. 27)

16 Pending before the Court is a motion to declare Plaintiff a vexatious litigation filed by
17 Defendants AP Express, LLC, AP Express Worldwide, LLC, World Pack USA, LLC, and Jeffery
18 Pont. Docket No. 27. The Court has considered Defendants' motion, Defendant Michelle Pont's
19 joinder, Plaintiff's response, and Defendants' reply. Docket Nos. 27, 28, 30, 32. The Court finds
20 the motion properly resolved without a hearing. *See* Local Rule 78-1. For the following reasons,
21 the Court **DENIES** Defendants' motion without prejudice. Docket No. 27.

22 Defendants ask the Court to declare Plaintiff a vexatious litigant based on, *inter alia*,
23 Plaintiff's previous cases which allege the same or similar facts as those alleged in the instant case.
24 *Id.* at 3-4. In response, Plaintiff submits that he was not served with a copy of the instant motion
25 and, therefore, could only respond based on his speculation of "what is contained in the motion."
26 Docket No. 30 at 1. In reply, Defendants submit that they "strongly believe they followed common
27 practice and served [Plaintiff] with a mailed copy of the [instant] Motion." Docket No. 32 at 2.
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1 Defendants further submit that, “[i]n an effort to clarify the record, [they] have re-served the 742-
2 page Motion on [Plaintiff]....” *Id.*; *see also* Docket No. 31 (certificate of service).

3 As Plaintiff responded to Defendants’ motion without ever having seen it, he has not had
4 a meaningful opportunity to respond to the arguments set forth in Defendants’ motion. Further,
5 the procedural postures of some of Plaintiff’s pending cases have changed since the filing of the
6 motion. Docket No. 27. In the interest of fairness to provide Plaintiff an opportunity to
7 meaningfully respond, the Court **DENIES** without prejudice Defendants’ motion to declare
8 Plaintiff a vexatious litigant. *Id.* Any renewed motion must contain relevant updates as to
9 Plaintiff’s pending cases, no later than August 14, 2018.¹

10 IT IS SO ORDERED

11 Dated: August 8, 2018

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14 NANCY J. KOPPE
15 United States Magistrate Judge
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27 ¹ Plaintiff’s response addresses a case currently pending before the Supreme Court of
28 Nevada, which Defendants fail to discuss in the instant motion. Docket No. 30 at 5. Any renewed
motion shall address this case, as well as any other relevant cases not addressed in the instant
motion.